## REMARKS

Status of the Claims

Claims 27-46 and 57-62 remain pending in the present application, Claims 1-26, 47-56 and 63 having been canceled in response to a Restriction Requirement, subject to applicants' right to file one or more divisional applications directed to the non-elected inventions, Claim 40 having been amended to correct a misspelled term and Claims 27, 39, and 57 having been amended to more clearly define the recited subject matter.

Claims Rejected Under Non-Statutory Obviousness-Type Double Patenting

Claims 27-46 and 56[sic]-62 are rejected based on non-statutory obviousness-type double patenting as being unpatentable over Claims 1-41 of U.S. Patent No. 7,265,669 (Application No. 10/791,057) entitled "Networks With Sensors For Air Safety and Security." In addition, Claims 27-46 and 56[sic]-62 have been rejected under the same basis over Claims 1-88 of U.S. Patent No. 6,887,710 (Application No. 10/066,404) entitled "Robust System For Screening Mail For Biological Agents." Applicants believe that a typographical error resulted in Claims 56-62 being rejected, as they believe based on the previous Restriction Requirement, that the Examiner intended to reject Claims 57-62.

Claims Rejected Under Provisional Obviousness-Type Double Patenting

Claims 27-46 and 56[sic]-62 are provisionally rejected based on non-statutory obviousness-type double patenting as being unpatentable over Claims 1-54 of copending Application No. 10/066,404 (now issued as U.S. Patent No. 6,887,710, entitled "Robust System For Screening Mail For Biological Agents"). In addition, Claims 27-46 and 56[sic]-62 are provisionally rejected under the same basis as being unpatentable over Claims 1-28 of copending U.S. Application No. 10/791,189 entitled "Biological Alarm."

The Examiner specifically notes that a terminal disclaimer, signed by an attorney of record, can be used to overcome such double patenting rejection. Such a terminal disclaimer is submitted concurrently herewith, with respect to U.S. Patent No. 7,265,669 and U.S. Application No. 10/791,189.

However, applicants respectfully disagree with the double patenting rejection based on the claims of U.S. Patent No. 6,887,710 as noted below.



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Traversal of Non-Statutory Obviousness-Type Double Patenting Based on U.S. Patent No. 6,887,710

Applicants respectfully submit that independent Claims 27, 39, and 57 of the above-identified application are NEITHER anticipated by NOR obvious over Claims 1-88 of U.S. Patent No. 6,887,710.

MPEP § 804 II.B.1.a indicates that if the application at issue is the later filed application or both are filed on the same day, only a one-way determination of obviousness is needed in resolving the issue of double patenting. In other words, since the above-identified application is the later filed application, this section of the MPEP indicates that the double patenting analysis should determine whether the invention defined in a claim in the above-identified application would have been anticipated by or an obvious variation of the invention defined in a claim in the 6,887,710 patent. Applicants respectfully submit that the claims of U.S. Patent No.6,887,710 do not anticipate nor render obvious the claims of the above-identified application.

Specifically, independent Claims 27, 39, and 57 have been amended to recite a planar collection surface, a surface regenerator for regenerating the collection surface such that particles collected before regenerating the collection surface are substantially no longer present to contaminate a spot of particles collected after regenerating the collection surface, and an analyzer configured to analyze the collected particles while they are retained on the collection surface. Applicants respectfully submit that Claims 1-88 of U.S. Patent No.6,887,710 do not teach or suggest these aspects of the currently pending claims.

The Claims of U.S. Patent No. 6,887,710 do NOT Anticipate the Pending Claims

As noted above, each pending independent claim recites the following elements: a planar collection surface, a surface regenerator for regenerating the collection surface such that particles collected before regenerating the collection surface are substantially no longer present to contaminate a spot of particles collected after regenerating the collection surface, and an analyzer configured to analyze the collected particles while they are retained on the collection surface.

Claims 1-88 recite various elements, including means to distinguish between biological and non biological particles (i.e., an analyzer, see Claims 4 and 15). Significantly, the analyzer recited in the claims of U.S. Patent No. 6,887,710 is not configured to analyze particles **while the particles are retained on a planar collection surface**. Note Claims 22, 28 ,and 67 of U.S. Patent No. 6,887,710 make it clear that particles are rinsed off of a radial arm collector (not a planar collection surface) to



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obtain a liquid sample (note the particles are not analyzed while on the collection surface). Thus, the claims of U.S. Patent No. 6,887,710 do not anticipate the pending claims.

Pending Claims 27 and 57 further recite a homing sensor, whose functional characteristics are not encompassed by the claims of U.S. Patent No. 6,887,710. Pending Claim 39 further recites means for translocating the collection surface relative to the relative to the nozzle, the analyzer, and the surface regenerator. The claims in U.S. Patent No. 6,887,710 do not disclose an equivalent means.

Pending Claims are NOT Obvious Variants of the Claims of U.S. Patent No. 6,887,710

The Examiner has asserted that although the conflicting claims are not identical, they are not patentably distinct from each other because all are directed to a device comprising an impaction plate, a nozzle for directing the sample to the plate, means to analyze the sample, and means to move and regenerate the surface for application of additional samples.

Applicants respectfully disagree. As noted above, each pending independent claim recites the following elements: a planar collection surface, a surface regenerator for regenerating the collection surface such that particles collected before regenerating the collection surface are substantially no longer present to contaminate a spot of particles collected after regenerating the collection surface, and an analyzer configured to analyze the collected particles while they are retained on the collection surface.

With respect to a planar collection surface that is regenerated so that previously collected particles are not present to contaminate subsequently collected particles, Claims 22, 28, and 67 of U.S. Patent No. 6,887,710 teach rinsing off particles from a radial arm collector (not a planar collection surface) to obtain a liquid sample. Significantly, there is no teaching that any collection surface disclosed in U.S. Patent No. 6,887,701 is substantially cleaned and prepared such that it can be used again for surface collection. Note that simply because some particles are removed from a collection surface to produce a liquid sample does not mean that the collection surface can be re-used without previously collected particles contaminating subsequently collected particles.

Even more importantly, Claims 1-88 of U.S. Patent No. 6,887,701 do not teach or suggest analyzing particles while they are retained upon the collection surface. The claims of U.S. Patent No. 6,887,710 disclose analyzing particles in a gas flow (particle counters) or in a liquid sample. MPEP 2143.01 specifically provides that "if the proposed modification or combination of the prior art



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would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." Modifying U.S. Patent No. 6,887,701 such that the particles are analyzed while retained on the collection surface would impermissibly change the principle of operation disclosed in U.S. Patent No. 6,887,701.

Furthermore, absent hindsight, there appears to be no reasonable basis for an artisan of ordinary skill to modify the claims in U.S. Patent No. 6,887,701 to achieve a system including the following elements: a planar collection surface, a surface regenerator for regenerating the collection surface such that particles collected before regenerating the collection surface are substantially no longer present to contaminate a spot of particles collected after regenerating the collection surface, and an analyzer configured to analyze the collected particles while they are retained on the collection surface.

It should also be noted that pending Claims 27 and 57 further recite a homing sensor, whose functional characteristics are not encompassed by the claims of U.S. Patent No. 6,887,710. Nor is there any evidence that an artisan of ordinary skill would have been lead to modify the claims of U.S. Patent No. 6,887,710 to incorporate such an element.

Pending Claim 39 further recites means for translocating the collection surface relative to the relative to the nozzle, the analyzer, and the surface regenerator. Again, the claims in U.S. Patent No. 6,887,710 do not disclose an equivalent means, nor is there any evidence that an artisan of ordinary skill would have been lead to modify the claims of U.S. Patent No. 6,887,710 to incorporate such an element.

In consideration of the amendments to the claims and the submission of a Terminal Disclaimer, it is applicants' position that all claims in the current application are patentable over the art of record. The Examiner is thus requested to pass this case to issue without further delay. In the event that any other issues remain, the Examiner is invited to telephone applicants' attorney at the number listed below.

Respectfully submitted,

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